XI-HC—78

(27)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CrA NO 855 **सन् 200**।

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT: (In Jail)	Madakami Borga, S/o Chamara Muriya, aged about 32 years, Agriculturist, Resident of Village Ooler, P.S. Tongpal, Dantewada, Chhattisgarh.
	-Versus-	
	RESPONDENT:	State of Chhattisgarh, Through the District Magistrate, Dantewada, Chhattisgarh.

(Appeal under Section 374 (2) of the Cr.P.C.)

Division Bench: -

Hon'ble Shri L.C. Bhadoo &

Hon'ble Shri Sunil Kumar Sinha, JJ.

13-12-2007:-

Smt. Usha Chandrakar, counsel for the appellant.

Smt. Anju Ahuja, Deputy Govt. Advocate for the State.

Oral judgment dictated on Dais.

L.C. Bhadoo, J.

The accused/appellant has preferred this appeal under Section 374 (2) of the Cr.P.C. questioning the legality and correctness of the judgment of conviction and order of sentence dated 17th July, 2001 passed by the Sessions Judge, Bastar at Jagdalpur in S.T. No.206/01

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whereby and whereunder learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that on 28-2-2001 at about 9 p.m. Raghuram (since deceased) and Nakul (PW-2) were talking and were warming themselves before the fire, at that time accused/appellant Borga came there and asked Raghuram that he is not giving share in the land, therefore, he will see him. He picked up a burning wood and attacked Raghuram on the right side of his head, as a result of which he sustained injuries and died. Seeing this, PW-2 Nakul raised cries. Hearing his cries, PW-1 Lakhmi Bai, wife of Raghuram, came on the scene, at that time Borga already left for his house. On the next day i.e. 1st March, 2001 a Panchayat was convened in the village. Before Panchayat the accused made extra judicial confession regarding committing murder of his brother Raghuram.

The matter was reported by PW-4 Podiyami Rama in the Police Station Tongpal on 1-3-2001, based on that First Information Report Ex.P/7 was registered by PW-5 Shri Krishna Yadav, Sub Inspector. Merg intimation Ex.P/10 was also registered. After giving notice to the Panchas, inquest Ex.P/1 was prepared by the I.O. on the body of

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the deceased. He seized plain soil and blood stained soil from the place of occurrence under Ex.P/2. Clothes of the deceased were seized under Ex.P/3. While in the police custody, the accused gave memorandum Ex.P/4, in pursuance of that a piece of burning wood, which was used in attacking the deceased, was seized under Ex.P/5. The body of the deceased was sent for postmortem examination to the Primary Health Centre, Tongpal under Ex.P/11 where Dr. L.N. Dhankar conducted the postmortem and opined that cause of death was due to brain haemorrhage on account of severe head injury. He prepared postmortem report Ex.P/8. Seized wood was sent to the doctor for his examination under Ex.P/13, after examination of the wood, the doctor gave his opinion Ex.P/9. Site plan Ex.P/12 was prepared by the investigating officer.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Sukma, who in turn committed the case to the Sessions Judge, Jagdalpur where the prosecution examined 6 witnesses in order to establish the charge against the accused. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing against him in the prosecution evidence, stated that he is innocent and has been falsely implicated in the crime in question.

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Learned Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellant has not disputed the homicidal death of the deceased. Moreover, PW-2 Nakul has stated that the accused attacked the deceased on his head with a burning fire wood, as a result of which the deceased sustained injuries and died on the spot. The above ocular evidence is corroborated by the evidence of Dr. L.N. Dhankar (PW-6), who conducted the postmortem on the body of the deceased and has stated that on 2nd March, 2001 he conducted postmortem on the body of the deceased. He noticed that there was one contusion on the right parietal region in the size of 4" x 2". There was lacerated wound on the right side of the head in parietal region in the size of $2\frac{1}{2}$" x $\frac{1}{2}$" x $\frac{1}{2}$". Injuries were inflicted by hard and blunt object. On opening of the skull, it was found that temporal bone was fractured. Brain membrane was ruptured. Clotted blood was present. Cause of death was haemorrhage, as a result of head injury. Death was homicidal in nature. His report is Ex.P/8. In

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view of the above ocular and medical evidence, it is established that death of the deceased was homicidal in nature.

As far as complicity of the accused in the crime in question is concerned, PW-2 Nakul is an independent witness. He has categorically stated that in the fateful night he and Raghuram were sitting outside the house. They were warming themselves before the burning fire wood. They were talking, at that time Borga came, he picked up a burning wood and attacked Raghuram on his head 2-3 times. He raised cries and Lakhmi Bai, wife of the deceased, also came on the scene. He has further stated that there was dispute between the two brothers regarding land. In cross-examination of this witness, defence has not been able to elicit any circumstance which makes the evidence of this witness unreliable or untrustworthy. He is an independent witness. The trial Court has rightly believed the evidence of this witness. This ocular evidence is corroborated by the medical evidence of Dr. L.N. Dhankar (PW-6). He has stated that he conducted postmortem on the body of the deceased & noticed two injuries on his head. His skull bone was fractured. Therefore, complicity of the accused in attacking the deceased is established by clear, cogent and legally admissible evidence. To this extent, we do not find any illegality or infirmity in the finding of the trial Court.

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Learned counsel for the accused/appellant argued that the deceased was brother of the accused/appellant. The deceased was not giving share of the accused in the land. There was some dispute between the two and on account of that he went to his brother deceased Raghuram where some altercation took place. All of a sudden, the accused picked up a burning wood which was lying on the spot and attacked the deceased without any intention to cause death of his brother.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused the material available on record. It is admitted position that the deceased was brother of the accused. It has come on record that at the time of the incident the deceased and PW-2 Nakul were warming themselves before the burning wood, at that time the accused came on the scene. Nakul has stated that there was some dispute between the two regarding share in the land. The accused said that the deceased was not giving share to him in the land, he picked up a burning wood from the place of occurrence & all of a sudden attacked the deceased. The above facts reveal that there was dispute between

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	the two regarding share in the land. The deceased was not giving any share to the accused that is why, in a heat of passion, all of a sudden, without any pre-meditation or preparation, the accused picked up a burning wood which was lying on the spot and attacked his brother. From the above facts, it cannot be inferred that the accused attacked the deceased with intention to cause his death. However, from the above facts, it can safely be inferred that the manner in which the accused attacked the deceased with burning wood on his head, he had a knowledge that he may likely to cause death of the deceased by attacking in such a manner. Therefore, in view of the above, we are of the considered opinion that conviction under Section 302 of the I.P.C. cannot be sustained. In the result, the appeal partly succeeds, while acquitting the accused of charge under Section 302 of the I.P.C., he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 7 years. It is stated that the accused is in detention since 2-3-2001 till today, therefore, he shall be entitled for set off of the above detention period against the sentence imposed upon him. **Sd/-** **L.C.BHADOO** **Judge** **Sd/-** **Sunil Kumar Sinha** **Judge**	
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सरकीय क्षेत्रीय मुद्रणालय, राजनांदगांव —FS/59— 8/2007 —30,000.